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10-07682

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

IN RE:

Luis Rene Velasco
Debtor.

JPMorgan Chase Bank, N. A., successor by merger
to Bank One N.A.

Movant,
vs.

Luis Rene Velasco, Debtor; Dianne C. Kerns,
Trustee.

Respondents.

No. 4:09-bk-23695-JMM

Chapter 13

**MOVANT'S MOTION TO LIFT
THE AUTOMATIC BANKRUPTCY STAY**

RE: Real Property Located at
850 W. Saddle Dr.
Nogales, AZ 85621

Movant hereby requests an order granting relief from the automatic stay of 11 U.S.C. 362(a), and to permit Movant to foreclose the lien of its Deed of Trust on real property owned by Debtor, by trustee's sale, judicial foreclosure proceedings or the exercise of the power of sale, and to obtain possession and control of the real property.

This motion is supported by the attached Memorandum of Points and Authorities, which is

...

1 incorporated herein by this reference.

2 DATED this 25th day of March, 2010.

3 Respectfully submitted,

4 TIFFANY & BOSCO, P.A.

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6
7 BY /s/ MSB # 010167

8 Mark S. Bosco

9 Leonard J. McDonald

10 Attorney for Movant

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 1. Luis Rene Velasco filed a voluntary petition for protection under Chapter 13 of the
13 Bankruptcy Code. Dianne C. Kerns was appointed Trustee of the bankruptcy estate.

14 2. Debtor has certain real property located in Santa Cruz County, Arizona, more
15 particularly described as:

16 A PORTION OF LOT 12 OF VALLE VERDE ESTATES NO.9, A SUBDIVISION
17 RECORDED IN BOOK 3 OF MAPS AND PLATS AT PAGE 1, OFFICE OF THE
18 COUNTY RECORDER, SANTA CRUZ COUNTY, ARIZONA, AND MORE
19 PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE
20 SOUTHWESTERN MOST CORNER OF SAID LOT 12 OF VALLE VERDE ESTATES
21 NO. 9; THENCE NORTH 25 DEGREES 08'09" WEST, ALONG THE
22 SOUTHWESTERLY PROPERTY LINE OF SAID LOT 12, A DISTANCE OF 114.80
23 FEET (118.79 FEET-RECORD) TO THE WESTERLY MOST CORNER OF LOT 12,
24 BEING A SET 1/2" ALUMINUM CAPPED PIN STAMPED "SANCHE ASSOCIATES-
25 RLS 12536; THENCE NORTH 61 DEGREES 53'18" EAST, (N 61 DEGREES 51'51" E-
26 RECORD) ALONG THE NORTHWESTERLY PROPERTY LINE OF SAID LOT 12, A
DISTANCE OF 3.35 FEET (3.76-RECORD) TO A FOUND 5/8" IRON PIN; THENCE
NORTH 60 DEGREES 53'23" EAST, (N 61 DEGREES 51'51" E-RECORD)
CONTINUING ALONG SAID NORTHWESTERLY PROPERTY LINE, A DISTANCE
OF 1.40 FEET TO A POINT; THENCE SOUTH 27 DEGREES 52'23" EAST, A
DISTANCE OF 116.39 FEET TO ITS INTERSECTION WITH THE NORTHERLY
RIGHT-OF-WAY LINE OF SADDLE DRIVE, A DEDICATED STREET WITHIN THE
AFOREMENTIONED VALLE VERDE ESTATES NO. 9 SUBDIVISION; THENCE
ALONG A CURVE CONCAVE SOUTHERLY AND BEING UPON SAID RIGHT-OF-
WAY LINE HAVING A CENTRAL ANGLE OF 5 DEGREES 08'36" AND A RADIUS
OF 50.00 FEET, AN ARC DISTANCE OF 4.49 FEET TO THE TRUE POINT OF
BEGINNING.

1 3. Debtor executed a Note secured by a Deed of Trust, dated June 10, 1999, recorded in
2 the office of the Santa Cruz County Recorder's Office. True copies of the Note and Deed of Trust are
3 annexed as Exhibits "A" and "B", respectively, and made a part hereof by this reference.

4 4. By virtue of the Note and Deed of Trust, Movant has a secured interest in the
5 property described herein and a secured claim against Debtor. Movant may seek leave of Court to
6 specify any further encumbrances against the Property at the time of the Preliminary and/ or Final
7 Hearing hereon.

8 5. Debtor is in default on the obligation to Movant for which the property is security,
9 and payments are due under the Promissory Note from and after September 25, 2009. Post-petition
10 payments are due as follows:

7 Monthly Payments at \$489.79	\$3,428.53
(September 25, 2009 - March 25, 2010)	
Motion for Relief Filing Fee	\$150.00
Attorneys Fees	\$350.00
Total	\$3,928.53

14 Furthermore, each subsequent payment becomes on the 1st day of every month thereafter, and
15 a late charge becomes due on any payment not paid within fifteen (15) days from the date the monthly
16 payment is due.

17
18 6. Debtor is indebted to JPMorgan Chase Bank, N. A., successor by merger to Bank One
19 N.A. for the principal balance in the amount of \$25,919.32, plus accruing interest, costs, and
20 attorneys fees.

21 7. Further, Movant seeks relief for the purpose of foreclosing its Deed of Trust against
22 the Debtor's interest in the real property located at 850 W. Saddle Dr., Nogales, AZ. The Movant
23 further seeks relief in order to contact the Debtor by telephone or written correspondence regarding
24 a potential Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan
25 Workout/Loss Mitigation Agreement, and may enter into such agreement with Debtors. However,
26

1 Movant may not enforce, or threaten to enforce, any personal liability against Debtors if Debtors'
2 personal liability is discharged in this bankruptcy case.

3 8. Pursuant to the Note and Deed of Trust Movant is allowed to request this court to
4 grant reasonable attorney's fees and costs and allowing payment of Movant's attorney's fees and
5 costs pursuant to 11 U.S.C. Section 506(b) which state as follows:

6 To the extent that an allowed secured claim is secured by property value of which, after any
7 recovery under subsection (c) of this section, is greater than the amount of such claim, there
8 shall be allowed to the holder of such claim, interest on such claim and any reasonable
fees/costs, or charges provided for under the agreement which such claim arose.

9
10 **CONCLUSION**

11 Movant requests that the court enter an order vacating the automatic stay of 11 U.S.C.
12 Section 362(a) and Movant may immediately enforce and implement the order for relief from the
13 automatic stay as to the debtor their bankruptcy estate, the property, and Movant; to allow Movant
14 to foreclose the lien of its Deed of Trust or Mortgage; to evict debtors and/or successors of debtor
15 and to obtain ownership, possession and control of the Property.

16 DATED this 25th day of March, 2010.

17 BY /s/ MSB # 010167
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22 Phoenix, Arizona 85016
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